IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1074 of 1979

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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BHUPENDRA PRAHALADBHAI BEING HEIRS OF BAI MANHAR - Appellant(s)
Versus
DEPUTY CHARITY COMMISSIONER & 20 - Defendant(s)

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Appearance :

MR RN SHAH for Appellant(s) : 1,
GOVERNMENT PLEADER for Defendant(s) : 1,
None for Defendant(s) : 2, 5,5.2.1 - 6,6.2.2 - 7, 7.2.1,7.2.2 - 13, 15, 17,
NOTICE SERVED for Defendant(s) : 3, 5.2.2, 7.2.3, 16, 18,
..... for Defendant(s) : 4,
- for Defendant(s) : 0.0.0, 0.0.0, 0.0.0, 14,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 10/08/2006

ORAL JUDGMENT

1. This appeal is directed against the judgement and order dated 22.07.1976 passed by the City Civil Court, Ahmedabad in Civil Misc. Application No. 13 of 1973 whereby the application filed against the judgement in Appeal No. 57 of 1964 decided by the Charity Commissioner dated 18.01.1972 against the order passed by the Deputy Charity Commissioner, Ahmedabad Region in Inquiry No. 6092 of 1952 on

30.06.1964 was dismissed.

2. The short facts of the present appellants are that there is a temple in the city of Ahmedabad known as Ambaji Mata Temple situated in Dhanasuthar's Pole, Ahmedabad. There was a suo moto inquiry on the report of the Inspector of Deputy Charity Commissioner's office. Notice was issued to one Bai Manhar who had filed the statement (Exh.9) stating that certain other persons mentioned by her in that statement were persons interested in the offerings made to said Ambaji Mata, that her husband and his ancestors were entitled to receive the said offerings for the aggregate period of 8 months and 20 days and for the rest of the period of the 8 year the said persons were interested. Said Bai Manhar expired later on.

3.1 Thereafter deceased filed written statement (Exh. 12) wherein she stated that her husband and his ancestors had been the manager of the said temples. One Ratilal Narandas who was one of the 13th Vara-holders to whom the notice was issued has filed the written statement at Exh. 13, and Exh. 19 is a joint written statement o the remaining 12 Vara-holders. In

the said written statement, they stated that Ambaji Mata Mandir is for Darshan for all the entire public and that it is false to say that the said mandir is a private property of deceased or that is meant only for her use. On 2nd of June, 1956 deceased who was represented by an advocate filed an application at Exh. 27 in the prescribed form for registration of this trust.

3.2 It further appears that subsequently the deceased as well as other Vara-holders filed separate appeals to Charity Commissioner being Appeals Nos. 4 and 5 of 1957 respectively. The appeals were heard together and the order passed by the Deputy Charity Commissioner Greater Bombay Region (with appeal powers). By the said order, he set aside the findings and the order passed by the Assistant Charity Commissioner, Ahmedabad and remanded it for fresh inquiry directing that public notice of this inquiry be issued so that the members of the public who are interested may come forward and lead evidence. He further directed that both the sides should be allowed to lead evidence to prove or disprove that

this temple is a private temple.

3.3 After remand, as per the direction given, public notice was issued in Jansatta Newspaper on 11th of August 1961. One Ratanlal Lallubhai was addressed on letter by the Charity Commissioner. Copy of the said letter was endorsed to the Deputy Charity Commissioner, with a direction that notice of hearing of the Inquiry should also be issued to him. After the said inquiry, the Deputy Charity Commissioner Shri Lalvani came to the conclusion that Ambaji Mata Mandir (Motta and Nana) situated in Dhanasuthar's Pole is a public trust. Being aggrived by the aforesaid order, the deceased preferred the Appeal NO. 57 of 1964 which was dismissed by order dated 18.10.1972.

4. Learned advocate for the appellant has submitted that there is absolutely no documentary or direct evidence to prove that the temples, in question, were dedicated to the public, it should have been held that these two temples are private temples of family deities of the appellant and they constitute a

private trust.

4.1 He further submitted that the family members of the appellant had been freely using different parts of the properties and also locked the main door of S.NO. 2623 and therefore, it should have been held that it is not a public property.

5. Heard. I have gone through the judgement of the trial court. While passing the judgement the trial court has observed in paragraph No. 42 as under:

> “There is no dispute on the point that the old City Survey No. 881 is shown as the private property of Karsanlal Bakorbhai and four others (wide Exh. 43). The old City Survey No. 881 is a common Khadki. Referring to the judgement of the Bombay High Court (Exh. 36) it is clear that Ambaji Mata temple was one of the joint owners of the common Khadki. The High Court has made the following observation in the said judgement:
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> > “Old C.S. No. 881 is a common Khadki leading to the temple of Ambaji. Exh. 40 is a Sanad for old City Survey No. 881 declaring the Khadki to be the private property of several persons including Keshavlal and Ambaji Mata's Temple. Keshavlal is the person from whom the plaintiff claims the title of Survey No. 881, the Kahdki. It is mentioned in the Sanad as a private

> property not only of Ambaji Mata Temple but several other persons including Keshavlal if Keshavlal had no private property in Khadki his name would not have been mentioned in the Sanad”

It is clear from the above observation that Ambaji Mata's Temple was one of the joint owners of old C.S. No. 881 which was common Khadki leading to the temple of Ambaji Mata Mandir. It is clear from Exh. 51 which is the extract of the property register of Survey No. 2620-A that it constituted of old survey No. 881, 754 and 16. Old C.S. No. 16 was Dharmada property and was exclusively standing in the same of Ambaji Mata Mandir (wide Exh. 152). It is very difficult to see how this C.S. No. 2620-A become the private property of the applicant alone. How and when Mandir's right to this property ceased to be existing. The applicant is a Vahivatdar of the temple and there is no question of creating her right in this common Kahdki by adverse possession against the interest of Ambaji Mata Temple. Even her witness Dr. Pushpendra Bhatt has also says that the said passage is being used when there is a crowd for passage specially by females. Similarly is the version of Ratanlal Lallubhai in his evidence at Exh. 84. It may be noted that the High Court passed a decree in appeal (wide Exh. 36). But it was so done with the observation that as the temple was not represented in that litigation and the plaintiff had not made the persons who were interested in the temple parties to the suit. That decision was without prejudice to the rights of the temple, if any, established in the subsequent litigation. In view of the evidence, I come to the conclusion that both the learned Deputy Charity Commissioner and Charity Commissioner have rightly held that the temple has the right of passage to Ambaji Mandir through the common Khadki of C.S. No. 2620-A as the joint owner thereof.

In view of the above, it is clearly established that the property which was involved is of the trust. Nothing is pointed out to take a contrary view of the matter.

6. I am therefore of the view that the Trial Court has not committed any error in passing the impugned order. I am in complete agreement with the reasonings adopted and the findings arrived at by the trial court. No case is made out to cause interference. Hence the appeal is dismissed. No order as to costs.

(K.S.JHAVERI, J.)

Suresh*